

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
Dallas Division**

CHARLENE CARTER, Plaintiff, v. SOUTHWEST AIRLINES CO., AND TRANSPORT WORKERS UNION OF AMERICA, LOCAL 556, Defendants.	Civil Case No. 3:17-cv-02278-X PLAINTIFF CHARLENE CARTER'S MOTION FOR LEAVE TO FILE A SUR- REPLY AND SUPPLEMENTAL DECLARATIONS IN RESPONSE TO SOUTHWEST'S NEW FACTS CONTAINED IN ITS REPLY IN SUPPORT OF ITS EMERGENCY MOTION AND REQUEST FOR SANCTIONS
---	---

Pursuant to Local Rules 7.1 and 56.7, Plaintiff Charlene Carter (“Carter”), by and through her counsel, hereby files this Motion for Leave to File a Sur-reply and Supplemental Declarations in response to Southwest Airline Co.’s Reply (ECF 106). Carter respectfully requests the Court’s leave to file the sur-reply and supporting declarations attached to this Motion in order to correct new factual allegations that Southwest raised for the first time in its Reply about Carter’s unsuccessful attempts to serve Stone at her Tampa residence and her suspected continued involvement with Stone’s travel information.

The Court may consider new evidence to correct the misleading portrayal of factual information. *See Woods v. Peters*, No. 4:05-cv-724-Y, 2007 WL 2729905, at *6 n.4 (N.D. Tex. Sept. 19, 2007). Southwest acknowledges that its Reply and supporting declarations contained new evidence and seeks the Court’s consideration of the new evidence under one of the exceptions to the rule that reply briefs may only respond to matters raised in the opposition brief. SWA Reply Br. 3 n.2. Therefore, the Court should likewise permit Carter to respond to Southwest’s new but erroneous assertions.

The Court should grant Carter's Motion for Leave and file the Sur-reply and Supplemental Declarations attached to this Motion.

Dated: July 24, 2020

Respectfully submitted,

s/ Matthew B. Gilliam
Mathew B. Gilliam (*admitted pro hac vice*)
New York Bar No. 5005996
mbg@nrtw.org
Jeffrey D. Jennings (*admitted pro hac vice*)
Virginia Bar No. 87667
jdj@nrtw.org
c/o National Right to Work Legal Defense
Foundation, Inc.
8001 Braddock Road, Suite 600
Springfield, Virginia 22160
Tel: 703-321-8510
Fax: 703-321-9319

s/ Jason E. Winford (with permission)
David E. Watkins
Texas Bar No. 20922000
dwatkins@jenkinswatkins.com
Jason E. Winford
Texas Bar No. 00788693
jwinford@jenkinswatkins.com
JENKINS & WATKINS, P.C.
4300 MacArthur Avenue, Suite 165
Dallas, Texas 75209
Tel: 214-378-6675
Fax: 214-378-6680

Attorneys for Plaintiff Charlene Carter

Certificate of Conference

I hereby certify that Plaintiff Charlene Carter's counsel, Matthew B. Gilliam, conferred with counsel for Defendant Southwest Airlines Co., Michael Correll, on July 24, 2020, to discuss filing this motion for leave to file a sur-reply and supplemental declarations in response to the new factual allegations raised in Southwest's reply about Carter's unsuccessful attempts to serve Stone at her Tampa residence and Stone's allegations in her Supplemental Declaration about the continued risk of harassment and intimidation.

After reviewing Carter's and Gilliam's supplemental declarations, Michael Correll responded that Southwest does not oppose Carter's filing the supplemental declarations and a sur-reply limited to addressing the timing of Carter attempts to serve Stone at her Tampa residence. Correll stated that Southwest opposes Carter's motion for leave to address any other issue, including the question of whether Stone faces a continued risk of harassment or intimidation. Correll stated his position that submitting unrelated evidence and making additional arguments about the separate issue of continued harassment and intimidation is inappropriate for a sur-reply.

Acknowledging Correll's opposition to addressing that issue, Gilliam explained his position that Audrey Stone's Supplemental Declaration presents new allegations regarding the continued risk of harassment and intimidation that she claims are also related to whether Gilliam and Carter had information about her whereabouts prior to June 25, 2020. (ECF 107, pp.7-8 ¶ 24). Therefore, Carter presumes that Southwest opposes this Motion as filed at least in part.

s/ Matthew B. Gilliam

Certificate of Service

I hereby certify that on July 24, 2020, I electronically filed the foregoing document with the Clerk of Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

s/ Matthew B. Gilliam